

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1961

No. 62

PAUL SEYMOUR, PETITIONER

vs.

MERLE E. SCHNECKLOTH, SUPERINTENDENT OF  
WASHINGTON STATE PENITENTIARY

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE  
STATE OF WASHINGTON

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1 In the Supreme Court of the State of Washington

No. 34112

IN THE MATTER OF THE APPLICATION FOR A WRIT OF HABEAS  
CORPUS OF PAUL SEYMOUR, PETITIONER

v.

MERLE E. SCHNECKLOTH, SUPERINTENDENT OF THE WASH-  
INGTON STATE PENITENTIARY AT WALLA WALLA, WASHING-  
TON, RESPONDENT

*Petition for a writ of habeas corpus*

*To the Honorable Supreme Court of the State of Washington  
and the Chief Justice Thereof:*

The petition for a writ of habeas corpus of Paul Seymour,  
the above-named petitioner, respectfully shows this court as  
follows:

I

That petitioner is a native Indian of the United States and  
an unemancipated member of the Colville Indian Tribe of the  
State of Washington and resident citizen thereof, residing at  
Walla Walla, Washington.

II

That petitioner is imprisoned and illegally restrained of  
his liberty in the Washington State Penitentiary at Walla  
Walla by Merele E. Schneckloth, the duly appointed, quali-  
fied and acting Superintendent of said penitentiary and the  
respondent herein named.

III

That petitioner is not committed to the said penitentiary by  
virtue of any process issued upon a valid final judgment of  
a Court of competent jurisdiction or for any contempt of a  
court, officer, or body having authority in the premises to

commit; or upon a warrant issued from the Superior Court upon an information or an indictment.

#### IV

That the cause and/or pretense for said restraint and imprisonment, to the best knowledge and belief of petitioner, is a purported Judgment and sentence and Warrant of Commitment entered on or about October 15, 1956, in Cause

2 No. 04093 of the records and files of the Superior Court of the State of Washington in and for the County of Okanogan, wherein, upon an information being filed against your petitioner on or about August 27, 1956, and a plea of guilty being entered thereto, it was Ordered, Adjudged and Decreed that your petitioner was guilty. Thereafter the Honorable Judge Joseph Wick Sentenced and committed petitioner to the Washington State Penitentiary for a term of not more than seven and one-half (7½) years on a charge of attempted second degree burglary.

A true and exact, certified, photostatic copy of the Judgment and Sentence being hereby attached and by this reference made a part hereof as fully as though set out herein in full.

#### V

That the aforesaid Judgment and Sentence is void and the imprisonment of petitioner thereunder is illegal and without authority of law in the following respects:

"That petitioner's incarceration in the Washington State penitentiary is illegal as the Superior Court of the State of Washington had no jurisdiction to issue a Judgment and Sentence and Warrant of Commitment."

#### VI

That your petitioner being a ward of the United States Government under the jurisdiction of the Bureau of Indian Affairs as defined in Title Twenty-five of U.S.C. (1952 ed.) Chapters 5 and 6, and the purported crime as charged against your petitioner (an Indian) took place in Indian Country as defined in the U.S.C. Title 18 (1952 ed.). See 1152 \* \* \*

Laws Governing \* \* \* U.S.C., Title 18 (1952 ed.). See 1153 "Offense Committed Within Indian Country," and 1151 "Indian Country Defined" and also see the decision of the Supreme Court of the State of Washington in Cause No. 33653, Dept. Two, Nov. L. 1956—Joe Andy v. Delmore for a writ of Habeas Corpus;

Now therefore, petitioner prays that this Honorable Court will grant a hearing on this petition and issue an order to the Respondent commanding him to show cause, if any he hath or can, why this petition should not issue and that he be ordered to have the body of petitioner before the Court on a day certain therein to be named to receive Judgment as the Court deems just in the premises, or, in the absence of showing, that Respondent be ordered to release petitioner from further illegal confinement.

Respectfully submitted.

(S) Paul Seymour,  
PAUL SEYMOUR,  
*Petitioner.*

Duly sworn to by Paul Seymour (jurat omitted in printing).

4 In the Supreme Court of the State of Washington

No. 34112

IN THE MATTER OF THE APPLICATION FOR A WRIT OF HABEAS  
CORPUS OF PAUL SEYMOUR, PETITIONER

v.

• MERLE E. SCHNECKLOTH, SUPERINTENDENT OF THE WASHINGTON STATE PENITENTIARY AT WALLA WALLA, WASHINGTON, RESPONDENT

*Return and answer*

Filed February 15, 1957

Comes now Merle E. Schneckloth, Superintendent of Washington State Penitentiary at Walla Walla, Washington, by and through his attorneys, John J. O'Connell, Attorney General, and Michael R. Alfieri, Assistant Attorney General, and for

a return and answer to the petition for a writ of habeas corpus in the above entitled court, alleges, admits, and denies as follows:

## I

That the respondent has no knowledge or information sufficient to form a belief as to the allegations in Paragraph #1 of the petitioner's application and therefore denies the same.

## II /

Admits that the petitioner is imprisoned in the Washington State Penitentiary by the respondent; denies that he is illegally restrained.

## III

Denies each and every allegation contained in Paragraph 3.

## IV

Admits Paragraph #4.

## V

Denies each and every allegation contained in Paragraph #5.

## VI

That the respondent has no knowledge or information sufficient to form a belief as to the allegations contained in Paragraph #6 of the petitioner's application and therefore denies the same.

Wherefore, respondent, having fully answered petitioner's application for a writ of habeas corpus, prays that said application for a writ of habeas corpus be dismissed and respondent discharged from further answer herein.

JOHN J. O'CONNELL,  
*Attorney General.*

MICHAEL R. ALFIERI,  
*Assistant Attorney General.*

Duly sworn to by Michael R. Alfieri (Jurat omitted in printing).

6 In the Supreme Court of the State of Washington

No. 34112

IN THE MATTER OF THE APPLICATION FOR A WRIT OF HABEAS  
CORPUS OF PAUL SEYMOUR, PETITIONER

vs.

MERLE SCHNECKLOTH, SUPERINTENDENT OF THE WASHINGTON  
STATE PENITENTIARY AT WALLA WALLA, WASHINGTON,  
RESPONDENT

*Order of reference*

June 6, 1957

[File endorsement omitted.]

It having been determined by the court, pursuant to Rule 56(5), Rules on Appeal, 34A Wn. (2d) Supp. No. 6, p. 17, that the return and answer herein raise issues of fact which cannot be determined from the face of the record,

It is hereby ordered that the petition and all proceedings had thereon in this court be referred to the superior court of the state of Washington for Okanogan county, to take evidence and report the same to this court, and make findings of fact on the following questions:

(1) At the time of the commission of the offense charged in the information, was the petitioner an enrolled member of any Indian tribe;

(2) Where was the alleged offense committed; specifically, was that place "Indian Country" as defined by Title 18, USC, § 1151;

All subject to examination, consideration, approval, modification or other disposal by this court;

It is further ordered that the petitioner be accorded the right of attending the hearing in person and by counsel and to have the compulsory right of subpoena and the service thereof, as the superior court may order.

Dated this 6th day of June 1957.

By the Court:

(S) MATTHEW W. HILL,  
Chief Justice.

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PAUL SEYMOUR VS. MERLE E. SCHNECKLOTH

7

In the Superior Court of the State of Washington in  
and for the County of Okanogan

No. 14578

IN THE MATTER OF THE APPLICATION FOR A WRIT OF HABEAS  
CORPUS OF PAUL SEYMOUR, PETITIONER

v.

MERLE SCHNECKLOTH, SUPERINTENDENT OF THE WASHING-  
TON STATE PENITENTIARY AT WALLA WALLA, WASHINGTON,  
RESPONDENT

*Statement of facts*

Before Hon. Joseph Wicks.

Date: September 30, 1957, at 1:30 p.m.

Appearances: For the Petitioner: Earl K. Nansen, Attor-  
ney-at-Law, Omak, Washington. For the Respondent: John  
J. O'Connell, Attorney General, By Michael R. Alfieri, Assist-  
ant, Olympia, Washington.

9

*Statement by the Court*

The COURT. Gentlemen, you may proceed. There are two  
questions that have been referred to this court by the Supreme  
Court of the State of Washington. The issues to be deter-  
mined: First to determine whether at the time of the commis-  
sion of the offense or at the time of filing the information, was  
the petitioner an enrolled member of an Indian tribe? Second,  
where was the alleged offense committed? Specifically was  
that place Indian country as defined in Title 18, U.S. Code  
Section 1151.

PAUL SEYMOUR called as a witness in his own behalf, being  
first duly sworn, testified as follows:

Direct examination by Mr. NANSEN:

Q. Your name is Paul Seymour?

A. Yes.

Q. You are the petitioner in this matter before the court at  
this time, are you not?

A. Yes, sir.

Q. At the present time you are incarcerated in the state penitentiary at Walla Walla, is that correct?

10 A. Yes.

Q. That was pursuant to a previous judgment of this court, was it not, that was entered after your plea of guilty to attempted burglary?

A. Yes.

Q. Prior to the time of your commitment where was your residence, Mr. Seymour? Where did you live prior to the time you were committed?

A. Inchelium.

Q. Is that in Okanogan County?

A. No; Ferry County.

Q. That is property that is under the jurisdiction of the Colville Indian Reservation, is it not?

A. Yes.

Q. Now, this alleged offense on which you were adjudged guilty of attempted burglary occurred on August 25th, 1956, did it not?

A. Yes.

Q. And on August 25th, 1956, would you state whether or not you were an enrolled member of the Colville Indian tribe?

A. Yes.

Q. And you are of the Indian race, are you, Mr. Seymour?

A. Yes.

Q. And were you born a Colville Indian?

11 A. Yes.

Q. And that occurred on what you know as the Colville Indian reservation, is that correct?

A. Yes.

Q. Was that at Inchelium?

A. Omak.

Q. At Omak, Washington?

A. Yes.

Q. And has your name ever been stricken from the rolls of the Colville Indian tribe?

A. No.



Q. At the present time you are still an enrolled member of the Colville Indian tribe?

A. Yes.

Q. Now the alleged crime for which you were committed to the state penitentiary, would you tell us where that occurred?

A. (Witness did not answer.)

Q. With respect to geographical location where did it happen?

A. Omak—East Omak.

Q. In East Omak?

A. Yes.

Q. That would be the portion of the city of Omak that lies east of the Okanogan river, is that correct?

12 A. Yes.

Q. It was a place referred to as the Omak Market, was it not?

A. Yes.

Q. The proprietor of the establishment is Mr. Fred Rusk?

A. Yes.

Q. Do you know that to be a fact?

A. Yes.

Mr. NANSEN. You may inquire.

Cross-examination by Mr. ALFIERI:

Q. Did you testify that you are presently serving a sentence for this crime?

A. Yes.

Q. Haven't you been sentenced on two other prior occasions?

A. (Witness did not answer.)

Q. Have you been sentenced to Monroe or Walla Walla before?

A. Yes.

Q. What years were they?

A. 1956.

Q. What was that crime?

A. Burglary.

Q. Where was that committed?

A. (Witness did not answer.)

13 Q. Can't you recall?

A. (Witness shakes his head.)

Q. What was the previous crime prior to that?

A. That is the only two there were.

Mr. ALFIERI. I have no further questions.

Redirect examination by Mr. NANSEN:

Q. Paul, you weren't committed on any other crime in 1956 other than this one you are talking about, a burglary at the Omak Market, were you?

A. No; it was in 1955.

Q. That was the previous one?

A. (Witness nods his head.)

Q. At the present time you are serving time because of this alleged offense that occurred in 1956 at the Omak Market, are you not?

Mr. ALFIERI. I object to that your Honor as being a conclusion.

The COURT. The objection will be overruled.

By Mr. NANSEN:

Q. Do you know whether or not you are serving time because of the burglary that occurred in 1956 at the Omak Market?

A. Yes.

Mr. NANSEN. That is all.

14 Re-cross-examination by Mr. ALFIERI:

Q. What sentence were you given in 1955, do you know, Mr. Seymour?

A. Fifteen years.

Mr. NANSEN. I am going to object to that line of questioning for the reason I believe this hearing is only for the purposes stated in the court's opening comments.

The COURT. The objection will be sustained.

Mr. ALFIERI. I have no further questions.

Witness excused.

JOHN F. ARKELL called as a witness on behalf of petitioner, being first duly sworn, testified as follows:

Direct examination by Mr. NANSEN:

Q. Will you state your name please?

A. John F. Arkell.

Q. Where do you reside, Mr. Arkell?

A. At the Colville Indian Agency at Nespelem, Washington.

Q. What is your occupation at the present time?

A. Special Officer, U.S. Indian Service.

Q. At the present time you are assigned to the Colville Indian Reservation, are you?

15 A. Yes; Colville and Spokane—both of them.

Q. Both the Colville and Spokane reservations?

A. Yes.

Q. When you work here in the Colville Indian Reservation, is it under the direction of the superintendent, Mr. Floyd Phillips?

A. It is.

Q. Are you familiar with the official rolls of the Colville Indian tribe?

A. I am.

Q. Do you have those rolls pertaining to this petitioner with you today?

A. I do.

Q. Would you advise the court whether or not the petitioner, Paul Seymour, is an enrolled member of the Colville Indian Tribe?

A. From the official roll Paul Seymour is number 2919, born 8/5/36, three-fourths Indian blood.

Q. He was enrolled at the time of birth, was he, Mr. Arkell?

A. Well, I imagine that he was knowing the way they come in.

Q. He was born a member of the Colville Indian Tribe?

A. Yes; that is correct.

Q. Is he still at the present time a member of the Colville Tribe?

16

A. Yes according to the official rolls.

Q. Would you state whether or not he has been emancipated?

A. No.

Q. Do you know whether or not he is an allottee?

A. No; I don't know that. It don't show that he has an allotment.

Q. On August 25th, 1956, he would have been an enrolled member of the Colville Indian Tribe?

A. That is right.

Q. This information that you are giving is secured from the original official rolls?

A. That is right.

Q. And they are in the custody of the superintendent, Mr. Floyd Phillips?

A. That is right; yes.

Q. That is, the superintendent of the Colville Indian Reservation?

A. Yes.

Mr. NANSEN. You may examine.

Mr. ALFIERI. No questions.

Witness excused.

17 FRED RUSK called as a witness on behalf of petitioner, being first duly sworn, testified as follows:

Direct examination by Mr. NANSEN:

Q. Will you state your name please?

A. Fred J. Rusk.

Q. Where do you reside, Mr. Rusk?

A. Omak.

Q. What is your occupation?

A. Grocer.

Q. What is the name of the establishment that you operate?

A. The Omak Market.

Q. You are the owner and proprietor of that business, are you?

A. Yes.

Q. On August 25th, 1956, were you the owner and proprietor of the Omak Market?

A. Yes.

Q. Where is the Omak Market located, Mr. Rusk?

A. Omak.

Q. In what portion of the town of Omak?

A. East Omak.

Q. That is the portion of the city of Omak which lies east of the Okanogan river?

A. Yes.

18 Q. Would you state the address of your establishment?

A. It is the southwest corner at the intersection of 6th and Jackson, East Omak.

Q. That is 6th Avenue?

A. 6th Avenue and Jackson.

Q. And Jackson Street?

A. Yes.

Q. Did Jackson Street have any other name at any prior time?

A. Originally platted I believe it was by number and was called 10th Street.

Q. So what used to be 10 Street is now Jackson?

A. Yes.

Q. You have seen the plats of the townsite of East Omak so you can tell where your property is, have you?

A. Yes.

Q. Handing you what is marked Plaintiff's Exhibit #1, would you identify that?

A. Yes.

Q. Will you tell me what that is?

A. It is a plat of the townsite of Omak—East Omak.

Q. And would the location of your establishment be on that map?

A. Yes.

Mr. NANSEN. I would like to offer this as an exhibit.

Mr. ALFIERI. What is the purpose of it?

19 Mr. NANSEN. It is for the purposes of illustration and I will have the witness further identify it.

Q. Mr. Rusk will you take a pencil and circle the area where your place of business is located?

A. Lot 9, at the intersection of 6th Avenue and 10th Street on this map. At present it is Jackson.

Q. With respect to the lot and block number would you please state from this map what is the lot and block number?

The COURT. Are you continuing your identification of it?

Mr. NANSEN. Pardon me. I should offer it.

Mr. ALFIERI. I have no objection.

The COURT. It may be admitted.

By Mr. NANSEN:

Q. Now will you tell me from that Exhibit #1 the lot and block number of your property?

A. Block 118, Lot 9.

Q. At the present time you are purchasing that property, are you not?

A. Yes.

Q. Can you tell the court what section, township and range that would be located in?

A. I believe it is 36—

Q. Section 36?

A. Section 36, Range 26, I believe.

20 Q. All of this plat is township 34 north, Range East of the Willamette Meridian. Now is that the township and range where your property is located?

A. Yes.

Q. And it would be in Section 36 of that township and range?

A. Section 36 of that township and range.

Q. That particular portion of Section 36 all lies east of the Okanogan river?

A. Yes.

Q. I believe you stated you were the proprietor on August 25th, 1956?

A. Yes.

Q. You actually were present when there was an attempted burglary upon this establishment by this petitioner, Paul Seymour?

A. Yes.

Q. The offense actually occurred at your place of business there in East Omak?

A. Yes.

Mr. NANSEN. You may inquire.

Cross-examination by Mr. ALFIERI:

Q. You are purchasing this from whom, Mr. Rusk?

A. William Robbins, Jr.

21 Q. He held the fee patent?

A. Yes.

Mr. ALFIERI. No further questions.

Mr. NANSSEN. The petitioner rests, your Honor.

Mr. ALFIERI. Your Honor, we have nothing to offer in rebuttal. This is merely fact-finding, isn't it?

The COURT. Yes.

Mr. ALFIERI. We have nothing further to offer.

After argument of counsel the matter was taken under advisement and on October 22, 1957, the following decision was rendered by the Hon. Joseph Wicks, Judge of the above-entitled court.

*Findings of fact on reference from Supreme Court*

Petitioner, Paul Seymour, was charged by John Hancock, Prosecuting Attorney, in the above entitled court August 27, 1956, by Information, with the crime of burglary in the second degree. The charging part of the Information is to the effect that petitioner Seymour, with others, did on or about the 25th day of August, 1956, in the town of Omak, Okanogan County, Washington, break and enter a certain building in East Omak, town of Omak, known as the Omak Market, Fred Runk, proprietor. The petitioner was apprehended by the sheriff of Okanogan County and was arraigned before the above entitled court August 28, 1956; was informed of the nature of the charges against him; counsel was appointed for him and after conferring with his counsel, entered a plea of "not guilty" to the said charge. October 9, 1956, the petitioner was again before the court with his counsel and petitioned the court for permission to withdraw the plea of "not guilty" previously entered. Petition was granted and previous plea of "not guilty" was withdrawn. Prosecuting Attorney then moved the court that the petitioner be permitted to plea to the lesser and included offense of "Attempted Burglary in the Second Degree." Petitioner was then called upon for his plea to the lesser and included offense of Attempted Burglary in the Second Degree charged in the Information, to which he entered his plea of "guilty". Upon his plea of guilty the court found him guilty. The court was informed petitioner was not eligible for probation by reason of previous conviction of a felony. He was thereupon sen-



tenced to the penitentiary of the State of Washington for a period of not more than seven and one-half years.

Thereafter the Board of Prison Terms and Paroles fixed his minimum sentence at seven and one-half years. On the 30th day of September, 1957, he appeared before this court by reason of an order from the Chief Justice of the Supreme Court referring to this court for the taking of testimony and presentation of other evidence for the determination of two facts in connection with his application to the Supreme Court for a Writ of Habeas Corpus. The facts to be determined by the court are:

(1) Was the petitioner a member of the Colville Indian tribe?

(2) Was said offense committed in the "Indian Country" as that term is defined by Title 18 USC, Par. 1151?

At said hearing the defendant took the witness stand and was interrogated by his counsel. He testified that on the above-mentioned dates he was an enrolled member of the Colville Indian Tribe and resided at Inchelium, Ferry County, which is on the Colville Indian reservation; that the place where the alleged offense occurred was in East Omak, a part of the town of Omak which is east of the Okanogan river, on property owned by one Fred Rusk, known as the Omak Market; that he was now confined in the penitentiary of the State of Washington by reason of Judgment and Sentence issued out of this court as a result of his conviction of the above-mentioned offense.

Mr. John F. Arkell of the Indian Agency at Nespelem, Washington, a special officer of the United States Indian Service, was called to the witness stand by petitioner's counsel and testified that he had in his possession the official rolls of the Colville Indian Tribes; that he was familiar with said rolls and that said rolls show petitioner Paul Seymour is an enrollee on said records as enrollment number 2919; that he was born August 5, 1936; and was of three-quarters Indian blood; that so far as said records show he is still enrolled; that the records do not show him to be an Indian allottee.



Mr. Fred Runk was called to the stand by counsel for petitioner and testified he is and was on the date the offense occurred, purchasing the property where said offense occurred, from a party who holds the fee title thereto; that said premises are located on the southwest corner of 6th Avenue and Jackson Street (formerly 10th Street) in East Omak; that said premises are more particularly described as Lot 9, Block 118 of the government townsite of Omak and situate in Section 36, Township 34, North Range 26 E.W.M.

This concluded testimony offered by petitioner. No evidence was offered by respondent. Counsel for petitioner requested the court to take judicial notice of certain federal statutes and requested one week to present the same. Counsel for the state requested a like period of time after petitioner's presentation of his memorandum of authorities to answer the memorandum of petitioner. These requests were approved by the court.

In determining the facts requested there is no difficulty in determining the first, viz: "At the time of the commission of the offense charged in the Information, was the Petitioner an enrolled member of an Indian Tribe?" Clearly the  
25 above establishes this to be a fact. The Petitioner was at the time of the commission of the offense, an enrolled member of the Colville Indian Tribes.

The second question, viz: "Where was the alleged offense committed; specifically, was that place 'Indian Country' as defined by Title 18 USC, Par. 1151?" poses a more complicated question. Under the pertinent statute defining "Indian Country" there are three specific instances designated as "Indian Country". (1) All lands within the limits of any Indian Reservation under the exclusive jurisdiction of the United States Government; (2) all dependent Indian communities within the borders of the United States; (3) all Indian allotments, the title to which have not been extinguished. Under this definition of "Indian Country" the second question requested to be determined is one of both law and facts.

Considering first the facts as they relate to the last two provisions of the statute, the evidence is clear the locus in quo was not in a community of dependent Indians. Neither was

the offense committed on an Indian allotment. The government title to the land where the offense occurred had prior thereto been extinguished. So these two provisions of the statute are eliminated from our consideration.

If the offense was committed in "Indian Country" as defined by #1151 above-mentioned, it will have to be under section (a) that is, on land within the limits of an Indian Reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation. To resolve the question it must first be determined whether the offense was committed on an Indian Reservation under the exclusive jurisdiction of the United States. This can best be done by examination of the proclamation of the President and federal statutes relating to the same. These are the historical facts that are pertinent.

July 2, 1872, the following order was issued by the President of the United States:

"EXECUTIVE MANSION,

"Washington, July 2, 1872.

"It is hereby ordered that the tract of country referred to in the within letter of the Commissioner of Indian Affairs as having been set apart for the Indians therein named by executive order of April 9, 1872, be restored to the public domain, and that in lieu thereof the country bounded on the east and south by the Columbia River, on the west by the Okanogan River, and on the north by the British possession, be, and the same is hereby, set apart as a reservation for said Indians, and such other Indians as the Department of Interior may see fit to locate thereon.

"U. S. GRANT."

"See Volume 1, Kappler Indian Affairs, Laws and Treaties, Page 915."

The territory thus was established as a reservation for the Colville Indians and remained in that status until the Act of Congress of July 1, 1892. (Vol. 27 U.S. Stats at Large 62) which provided: That subject to the reservations and allot-

ment of lands in severalty to the individual members  
27 of the Indians of the Colville Reservation in the State  
of Washington therein referred to, all the land in said  
reservation north of the township line between townships 34  
and 35 North of Range 37 East of the Willamette Meridian,  
"containing by estimation one million five hundred thousand  
acres, the same being a portion of the Colville Indian Reser-  
vation created by executive order dated July second, eighteen  
hundred and seventy-two, be, and is hereby, vacated and re-  
stored to the public domain, notwithstanding any executive  
order or other proceeding whereby the same was set apart as  
a reservation for any Indians or bands of Indians, and the  
same shall be open to settlement and entry by the proclama-  
tion of the President of the United States and shall be disposed  
of under the general laws applicable to the disposition of public  
lands in the State of Washington."

That the land by said Act of Congress restored to the public  
domain and opened up for settlement under the homestead  
laws of the United States is commonly referred to as the  
"North Half" of the Colville reservation. The remaining por-  
tion of said reservation is commonly referred to as the "South  
Half" or "Diminished Colville Indian Reservation." The lo-  
cus in quo is in this so-called "South Half of the diminished  
Colville Indian Reservation.

The above-mentioned Act of Congress further provided in  
Section 8, as follows:

"That nothing herein contained shall be construed as recog-  
nizing title or ownership of said Indians to any part of said  
Colville Reservation, whether that hereby restored to the pub-  
lic domain or that reserved by the government for their use  
and occupancy."

No further change in the status of said reservation was made  
until the Act of Congress of March 22, 1906 (see  
28 Vol 34, U.S. Stats. at Large, 80—(Chapter 1126 fifty-  
ninth Congress Session 1).

"An Act to Authorize the Sale and Disposition of Surplus  
or unallotted Lands of the Diminished Colville Indian Reser-  
vation, in the State of Washington and for other purposes."

The portion of said Act of Congress so far as the same is pertinent to the present issue before the court, provides as follows:

"The Secretary of the Interior be, and he is hereby, authorized and directed \* \* \* to sell or dispose of unallotted lands in the Diminished Colville Indian Reservation.

"(Section 2 provides for an allotment of eighty acres to each member of the tribe.)

"Section 3. That upon the completion of said allotments to said Indians the residue or surplus—that is, lands not allotted or reserved for Indian schools, Agency, or other purposes—of said diminished Colville Indian Reservation \* \* \* shall be open to settlement and entry under the homestead laws \* \* \* by proclamation of the President, \* \* \*

"(Section 6 provides the net proceeds derived from the sale of said surplus land shall be deposited in the U.S. Treasury to the credit of said Indians.)

"Section 7 provides for the reservation of a portion of said surplus lands for an Agency, School, and religious purposes, sawmill, grismill and other purposes.)

"(Section 11 provides portions of said lands might be reserved by the Secretary of Interior for townsite purposes.)"

Under authority of this Act the President did, by proclamation, under date of May 3, 1916, open this, the diminished Colville Indian Reservation (South Half) for entry and settlement under the homestead laws of the United States. (See 4 Kappler's Indian Affairs, Laws and Treaties 966.)

In addition to these above-mentioned authorities there are some decisions that throw some light on the subject. *State ex rel Best v. Superior Court*, 107 Wash. 238 (181 Pac. 688). This is a case wherein the accused was an Indian of the quarter blood, a member of the Colville Tribe of Indians, and had never severed his tribal relations. He was allotted a tract of land by the United States government in 1914, upon the South Half of the diminished Colville Indian Reservation in Okanogan County, which he had since held and occupied, but the title was held in trust by the federal government. It was alleged the crime of Grand Larceny with which he was charged,

if committed at all, was committed within the limits of the South Half of the diminished Colville Indian Reservation; but it was not claimed the crime was committed upon an Indian allotment or lands within the exclusive jurisdiction of the United States. The accused petitioned the Supreme Court for a Writ of Prohibition to prohibit the Superior Court of Okanogan County from trying the accused upon a charge of Grand Larceny. In that case the court said, among other things, that:

"What is still known as the south half of the diminished Colville Indian reservation is no longer an Indian reservation. By virtue of the Act of Congress of March 22, 1906, the president of the United States, by his proclamation of May 3, 1916, restored all of the south half of the diminished Colville Indian reservation to the public domain, subject only to the reservations and allotments of land in severalty to the individual Indians."

30 The authorities relied upon by the court in reaching this decision are those quoted and above referred to. Moreover an examination of the Presidential Proclamation of May 3, 1916, specifically provides definite lands that are reserved to the use of the Indians. The townsite of Omak is not among those lands so reserved.

In the case of *Tooisigah v. United States*, 186 Fed. (2) 93, it was held:

"When, however, the tribes occupying the reservation ceded the lands embraced within it to the United States, relinquishing and surrendering 'all their claim, title and interest,' subject to the allotments in severalty, and every allottee was given the benefit of and made subject to the laws, both criminal and civil, of the state or territory, with the gift of citizenship and equal protection of the laws, Section 6 of the Act of February 8th, 1887, 24 Stat. 388, we think it cannot be doubted that Congress thereby intended to dissolve the tribal government, disestablish the organized reservation and assimilate the Indian tribes as citizens."

The cited case differs from the case at bar only in that in the cited case title to the land ceded had been in the Indian tribe whereas in the case at bar the title has never been in the In-

dian, hence the tribe could not cede that to the government which it did not have, but the government could reserve such portion of the public domain as it saw fit for the use and benefit of the Indian and by statute retain exclusive jurisdiction over the same. Under the above-mentioned statutes and proclamations of May 3, 1916, the federal government again diminished the Colville reservation reducing it in size from that specified by the Act of 1892. See *Shore v. Shell*

31     *Petroleum Corporation*, 55 Fed. (2) 696; *State ex rel. Irvine v. District Court*, 239 Pac. (2) 272.

It is significant in this respect that the records of title to lands on the so-called "South Half" or diminished Colville Indian Reservation so far as they appear in Okanogan County, reveal that: approximately 148,300 acres of these lands are privately owned, title having been acquired from the federal government either under the Homestead Laws or by patent in fee issued to Indian allottees. Approximately 149,500 acres are Indian allotments with title still held in trust by the federal government for the allottees; approximately 342,940 acres is so-called "tribal lands". That is, lands the title to which is held by the government for the use and benefit of the tribe. The federal government retains no jurisdiction, exclusive or otherwise, over the 148,300 acres of privately owned lands within the South Half of what was once the "diminished Colville Indian Reservation."

From the foregoing it is concluded that the place where the crime was committed by the Petitioner is not "Indian Country" as that term is defined in Title 18 USCA Section #1151, the same not being land within the limits of an Indian reservation under the exclusive jurisdiction of the United States government.

Done at Okanogan, Washington, this 22nd day of October, 1957.

Signed: JOSEPH WICKS,  
Judge.



*Judge's certificate to statement of facts*

STATE OF WASHINGTON,  
County of Okanogan, ss:

I, Joseph Wicks, Judge of the Superior Court of the State of Washington, in and for the County of Okanogan, the Judge before whom the above-entitled matter was heard, to-wit: In the Matter of the Application for a Writ of Habeas Corpus of Paul Seymour, Petitioner vs. Merle Schneckloth, Superintendent of the Washington State Penitentiary at Walla Walla, Washington, Respondent, which is cause No. 14,578 in the Superior Court of Okanogan County, Washington;

Do Hereby Certify:

That the matters and proceedings embodied in the foregoing Statement of Facts are matters and proceedings occurring in said cause, and the same are hereby made a part of the record therein;

That the above and foregoing Statement of Facts contains all of the material facts, matters and proceedings heretofore occurring in said cause and not already a part of the record therein, and contains all the evidence, oral and in writing therein;

That the above and foregoing Statement of Facts was duly and regularly filed with the clerk of the said court and thereafter duly and regularly served within the time authorized by law;

That no amendments were proposed to said Statement of Facts excepting such as are embodied therein;

33 That due and regular written notice of application to the court for settlement and certifying said Statement of Facts was made and served upon the defendant, which notice specified the place and time (not less than three days nor more than ten days after the service of said notice) to settle and certify said Statement of Facts.

That the exhibit referred to in said Statement of Facts is directed to be, and hereby is, made a part of said Statement.

Dated at Okanogan, Washington, this .... day of .....,  
1957.

JOSEPH WICKS,  
*Judge.*

34 Reporter's Certificate (omitted in printing).

35 In the Supreme Court of the State of Washington

No. 34112, en banc

IN THE MATTER OF THE APPLICATION FOR A WRIT OF HABEAS  
CORPUS OF PAUL SEYMOUR, PETITIONER

v.

MERLE E. SCHNECKLOTH, SUPERINTENDENT OF THE WASH-  
INGTON STATE PENITENTIARY AT WALLA WALLA, WASHING-  
TON, RESPONDENT

*Opinion*

Filed November 19, 1959

Paul Seymour was charged with second-degree burglary al-  
legedly committed in the town of East Omak, Okanogan  
county, Washington.

When arraigned before the superior court, he appeared in  
person and by appointed counsel and pleaded "not guilty"  
to the charge. No jurisdictional issue was raised.

Subsequently, counsel petitioned for leave to withdraw the  
plea of "not guilty" to the charge of second degree burglary  
and to enter a plea of "guilty" to the included offense of *At-  
tempted Burglary in the Second Degree.* Permission was  
granted; the "not guilty" plea was withdrawn and, after con-  
sultation with counsel, Seymour pleaded and was adjudged  
"guilty of the crime of *Attempted Burglary in the Second De-  
gree.*" [Italics ours.] He was sentenced to the penitentiary  
for a period of not more than seven and one half years. Again,  
no jurisdictional issue was raised; however, in the "Statement  
of Trial Judge and Prosecuting Attorney" filed fourteen days  
after the judgment and sentence, Seymour was described as  
an "Indian and breeds of about defendant's own age."



Paul Seymour filed his petition for a writ of *habeas corpus* in this court, alleging that he was an enrolled member of the Colville Indian tribes and a ward of the United States Government; and that the "purported crime" was committed in "Indian Country", as that term is defined in 18 U.S.C. (1952 ed.) § 1151.

The return and answer to the petition for a writ of *habeas corpus* raised issues of fact that could not be "determined from the face of the record," so this court referred the matter to the trial court. See Rule on Appeal 56(5), RCW Vol. O.

36 "Burglary" is one of the crimes enumerated in the

Ten Major Crimes Act; hence, exclusive jurisdiction thereof is in the courts of the United States when the alleged crime is committed by an Indian in "Indian Country." 18 U.S.C. (1952) § 1153. The statute also provides that

"\* \* \* the offense of burglary shall be defined and punished in accordance with the laws of the State in which such offense was committed." 18 U.S.C. (1952 ed.) § 153.

We do not find it necessary, in the instant case, to decide whether attempted burglary in the second degree is within the ambit of the Ten Major Crimes act. Upon our reference, the superior Court of Okanogan county concluded that the crime was not committed on land within the limits of an Indian reservation under the jurisdiction of the United States government, even though it was committed on land within the limits of the "Diminished Colville Indian Reservation."

The trial judge included in his "Findings of Fact on Reference from Supreme Court" an exhaustive analysis of the laws and presidential proclamations applicable to the Colville Indian Reservation.

He said, in part:

"The remaining portion of said reservation is commonly referred to as the 'South Half' or 'Diminished Colville Indian Reservation.' The locus in quo is in this so-called 'South Half' of the Diminished Colville Indian Reservation.

"No further change in the status of said reservation was made until the Act of Congress of March 22, 1906 (see Vol. 34. U.S.

Stats. at Large, 80—(Chapter 1126 fifty-ninth Congress Session 1).

“An Act to Authorize the Sale and Disposition of Surplus or Unallotted Lands of the Diminished Colville Indian Reservation in the State of Washington and for other purposes.”

“Under authority of this Act the President did, by proclamation, under date of May 3, 1916, open this, the diminished Colville Indian Reservation (South Half) for entry and settlement under the homestead laws of the United States. (See 4 Kappler's Indian Affairs, Laws and Treaties 966).

“... an examination of the Presidential Proclamation of May 3, 1916, specifically provides definite lands that are not reserved to the use of the Indians. *The townsite of Omak is not among those lands so reserved.*”

“Under the above-mentioned statutes and proclamations of May 3, 1916, the federal government again diminished the Colville Reservation reducing it in size from that specified by the Act of 1892. See *Shore v. Shell Petroleum Corporation*, 55 Fed. (2) 696; *State ex rel Irvine v. District Court*, 239 Pac. (2) 272.

37 “It is significant in this respect that the records of title to lands on the so-called ‘South half’ or ‘diminished Colville Indian Reservation’ so far as they appear in Okanogan County reveal that: approximately 148,300 acres of these lands are privately owned, title having been acquired from the federal government either under the Homestead Laws or by patent in fee issued to Indian allottees. Approximately 149,500 acres are Indian allotments with title still held in trust by the federal government for the allottees; approximately 342,940 acres is so-called ‘tribal lands’. That is, lands the title to which is held by the government for the use and benefit of the tribe. The federal government retains no jurisdiction, exclusive or otherwise, over the 148,300 acres of privately owned lands within the South half of what was once the ‘diminished Colville Indian Reservation.’”

"From the foregoing it is concluded that the place where the crime was committed by the Petitioner is not 'Indian Country' as that term is defined in Title 18 U.S.C.A. Section #1151, the same not being land within the limits of an Indian reservation under the exclusive jurisdiction of the United States government." [Italics ours.]

The case of *State ex. rel. Best v. Superior Court*, 107 Wash. 238, 181 Pac. 688 (1919), is in point. In that case, a member of the Colville tribe, who has never severed tribal relations, sought a writ of prohibition to prevent the superior court of Okanogan county from trying him on a charge of grand larceny. In denying the writ, this court said:

"\* \* \* What is still known as the south half of the diminished Colville Indian reservation is no longer an Indian reservation. By virtue of the act of Congress of March 22, 1906, the president of the United States, by his proclamation of May 3, 1916, restored all of the south half of the diminished Colville Indian reservation to the public domain, subject only to the reservations and allotments of land in severalty to the individual Indians \* \* \* " *State ex rel. Best v. Superior Court*, supra, p. 241.

The crime not having been committed in "Indian country", as defined by statute (18 U.S.C. (1952 ed.) § 1151), the courts of the United States did not have exclusive jurisdiction. The Superior court of Okanogan county had jurisdiction of petitioner; hence, the petition for writ of *habeas corpus* is denied.

It is so ordered.

We concur:

WEAVER, C. J.  
FOSTER, J.  
HUNTER, J.  
MALLERY, J.  
DONWORTH, J.  
ROSELLINI, J.  
OTT, J.

We agree that the *locus* of the offense was not in "Indian country" and concur in the result.

HILL, J.  
FINLEY, J.

38

Supreme Court of the United States

No. 8 Misc., October Term, 1960

PAUL SEYMOUR, PETITIONER

v.

MERLE E. SCHNECKLOTH, SUPERINTENDENT OF WASHINGTON  
STATE PENITENTIARY

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT  
OF THE STATE OF WASHINGTON

*Order granting Motion for leave to proceed in forma Pauperis  
and Petition for writ of certiorari*

March 6, 1961

On consideration of the motion for leave to proceed herein in forma pauperis and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed in forma pauperis be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted. The case is transferred to the appellate docket as No. 782 and placed on the summary calendar.

MARCH 6, 1961.